



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Garvie

Group Art Unit: 3728

Serial No.: 09/584,375

Examiner: A Stashick

Filed : 05/31/2000

Title : CLEAT FOR FOOTWEAR

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

REAL PARTY IN INTEREST

Bruce Henry Garvie is the real party in interest in the above referenced patent application.

RELATED APPEALS AND INTERFERENCES

Neither Appellant's representative nor Appellant are aware of any related appeals and/or interferences affected by or having a bearing on the Board's decision in the pending appeal. There was a prior Appeal brief filed back on April 8 , 2003, but the Examiner withdrew the rejections and applied new prior art. Therefore, the prior Appeal Brief is deemed to be moot.

STATUS OF CLAIMS

Claims 1-5 and 12-20 are currently pending and stand finally rejected. Claim 6-11 have been canceled. Appellant accordingly Appeals the Examiner's Final Rejection of claims 1-5 and 12-20 which is as follows:

1. Claims 1-5 and 12-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over European Patent Application No. 342,232 to Aotani ("Aotani") in view of U.S. Patent No. 2,222,650 to Brady ("Brady") and U.S. Patent No. 5,996,260 to MacNeill ("MacNeill").

STATUS OF AMENDMENTS

No Amendments have been filed subsequent to the issuance of the Final Rejection or the withdraw of the Final Rejection on June 25, 2003. All amendments filed prior to the Final Rejection have been entered and considered.

SUMMARY OF THE INVENTION

Referring to Figure 1 of the application as filed, an insert 10 used in the manufacture of a cleat 26 for an article of footwear is disclosed. Each cleat 26 is composed of a traction member 28 positioned about and encasing the insert.

The insert 10 includes a stem portion 12 with an engagement means in the form of an external screw thread 14 being defined on a first end 16 of the stem portion 12 for releasable engagement with a complementary engagement formation of an undersole of the article of footwear

or golf shoe. The insert 10 also includes a securing formation in the form of a skirt or flange 18 which extends substantially orthogonally from a second end 20 of the stem portion 12. The flange 18 has radially extending limbs 22 (as shown in Figures 3 to 6 in dotted lines). Four circumferentially spaced apart apertures 24 are defined in the flange 18. The second end 20 of the insert 10 includes a raised spike 19 in opposition to the stem 12.

The insert 10 is formed of a synthetic plastic material. In accordance with a preferred embodiment of the present invention, the synthetic plastic material may be an unreinforced impact modified PA6 grade plastic material with low density, such as obtainable from BASF South Africa under the trade name "Ultramid B3Z", and having a ball indentation hardness of 80 MPa. Further, it has now been found that the insert may be formed from LARIPUR - 30% glass filled crystalline polymer Laripur 72D25, CRAFTIN glass filled crystalline polymer Crastin S600 or NYLON glass filled crystalline polymer Nylon B3-6. The insert 10 is integrally molded in a first step of an injection molding process at a barrel temperature between 210 - 285°C and molded at a temperature of between 60-70°C.

Referring now to Figures 2 to 5 of the application as originally filed, a cleat 26 in accordance with the present invention is disclosed. The cleat 26 is adapted for use with an article of footwear or golf shoe. Each cleat 26 includes the insert 10 as shown in Figure 1 and a traction member 28. The traction member 28 is secured to the securing formation 18 of the insert 10. The traction member 28 is of a resiliently deformable synthetic plastic material and is formed about the insert 10 in an injection molding process. Once formed, the securing formation 18 and the second end 20 of the stem portion 12 are encased in the traction member 28, with the first end 16 of the stem portion 12, on which the screw thread 14 is defined, protruding from the traction member 28.

In accordance with a preferred embodiment of the present invention, the traction member 28 is made from LARIPUR 5225, 51D Shore, HYTREL 4056, 90-95 Shore-A or ELASTOLLAN 598, 90-95 Shore-A and injection molded at a barrel temperature of 150 - 180°C and mold temperature of 50 - 60°C. Ultimately, and as will be discussed below in greater detail, the insert 10 is manufactured so as to be harder than the traction member 28.

It will be appreciated that, because both the insert 10 and the traction member 28 are formed of synthetic plastic materials, they will rigidly bond in the injection molding process at controlled temperatures. In fact, the insert 10 and traction member 28 may be made from the same synthetic plastic material with the hardness of the materials varied such that the insert 10 is harder than the traction member 28.

Each traction member 28 is substantially circular in plan view, having a substantially planar upper surface (as shown in Figure 2 of the drawings) which in use abuts the undersole of a shoe. A plurality of traction spikes 32 are defined on a bottom surface 34 of each traction member 28. The spikes 32 may be triangular in shape (Figure 4), rhombohedral (Figure 3), circular (Figure 5), or wedge-like (Figure 6). Each spike 32 has a substantially planar contact portion 36 to enhance wear.

A central traction formation or spike 38 is defined on the bottom surface 34 of each traction member 28. The central traction spike 38 is aligned with the raised spike 19 on the second end 20 of the stem portion 12 of the insert 10. In fact, the raised spike 19 sits within the central spike 38 in a manner providing for early wear detection as discussed below.

The traction member 28 may be of a different color than the insert 10. Thus, when the central traction formation 38 is worn away by use, a part of the raised spike 19 of the insert will be visible. This feature serves as a wear indicator, alerting a user of the shoe to replace the cleat 26. As

mentioned above , the fact that the raised spike 19 extends within the central spike 38 allows for early detection of cleat wear. Specifically, the spike 19 is revealed when only the top portion of the central spike 38 is worn. A user is thereby readily warned as to the wear status of the cleat 26.

A pair of openings 40 are defined in each traction member 28. The openings allow the teeth of a tightening member to be inserted for insertion and removal of the cleat 26 from the shoe.

ISSUES

1. Whether claims 1-5 and 12-20 are unpatentable under 35 U.S.C. § 103(a) based upon Aotani in view of Brady and MacNeill.

GROUPING OF THE CLAIMS

The appealed claims do not stand or fall together.

Claims 1, 2, 3 and 12-20 stand or fall together.

Claims 4 and 5 stand or fall together.

ARGUMENTS

I. CLAIMS 1,2, 3 AND 12-20 ARE NOT OBVIOUS UNDER 35 U.S.C. § 103(a) BASED UPON THE DISCLOSURE OF AOTANI IN VIEW OF BRADY AND MACNEILL.

Claim 1 defines a cleat consisting entirely of plastic for an article of footwear. The cleat includes an insert and a plastic traction member. The insert and traction member constitute separate and distinct elements formed at distinct times in the manufacturing process. The insert is made

from a synthetic plastic material. The insert includes a stem portion with engagement means for releasable engagement with a complementary formation defined on an undersole of the article of footwear.

The plastic traction member is secured to the insert during a molding process. With the exception of the engagement means, the traction member encases the insert holding the insert captive within the traction member. The insert is made entirely from a synthetic plastic material having a greater hardness than the traction member.

In establishing the law governing obviousness-type rejections, the Supreme Court in *Graham v John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy. . . This is not to say, however, that there will not be difficulties in applying the nonobviousness test. What is obvious is not a question upon which there is likely to be uniformity of thought in every given factual context. The difficulties, however, are comparable to those encountered daily by the courts in such frames of reference as negligence and scienter, and should be amenable to a case-by-case development. We believe that strict observance of the requirements laid down here will result in that uniformity and definitiveness which Congress called for in the 1952 Act.

With the foregoing in mind, the U.S. Patent & Trademark Office has determined that a prima facie case of obviousness is established by meeting three basic criteria. First, the Examiner must show some suggestion or motivation to modify the reference or to combine reference teachings. Second, the Examiner must show a reasonable expectation of success in modifying the primary reference based upon the teachings of the prior art. Finally, the prior art reference (or

references when combined) must teach or suggest all the claim limitations. Support for the proposed modification and the reasonable expectation of success must be found in the prior art. MPEP 706.02(j).

The Examiner has rejected the appealed claims based upon the disclosure of Aotani in view of Brady and MacNeill. The Examiner contends that it would be obvious to replace the rubber of Aotani with the spike encasing rubber taught by Brady and then replace the spike encasing rubber taught by Brady with the soft plastic taught by MacNeill. It is, however, Appellant's opinion that any modification of the rubber in Aotani or Brady based upon the disclosure of MacNeill would be inappropriate. As such, the outstanding rejection is considered to be improper.

Aotani fails to disclose a plastic insert encased during a molding process with a plastic traction member. Aotani does disclose a variety of spikes including a plastic insert having a screw portion (the Examiner has specifically referenced Figures 6 and 8 as showing this structure). However, Aotani does not cover any of the spikes with plastic or rubber and when the portions of the plastic insert covered with a rubber traction member are not covered via a molding process. Surely, Aotani was aware of the idea of covering the entire cleat with a rubber traction member as he chose to do it in the embodiments shown in Figures 4 and 5 (those embodiments not including a spike), but not to do it in the embodiments shown in Figures 6 and 8. Thus, to cover it as suggested by the Examiner in view of the teachings of Brady is contrary to Aotani's invention.

Regardless, Brady like Aotani, discloses a rubber traction member, albeit the traction member in Brady does encase the insert with the exception of the threads. The Examiner uses the disclosure of Brady as supporting the proposition that it would have been obvious to one of ordinary skill in the art to modify Aotani by covering the disclosed spike. However, Brady

specifically discloses that the rubber stretches in order to enable the peg to penetrate the ground. Further, the rubber is not secured via a molding process it is surface bonded at its base or portion 19 and unsecured to the peg so that the rubber may move. As such, modification of Aotani as suggested by the Examiner would necessarily require that the cover taught by Brady be applied in the manner taught by Brady. As such, the rubber applied to Aotani would be required to stretch to facilitate penetration of the covered spike. It is Appellant's opinion such a construction runs contrary to a quality design. Quite frankly, Aotani some forty years later chose not to cover the entire cleat mostly likely because the peg would penetrate the rubber.

The differences between the utilization of plastic as claimed in accordance with the present invention and rubber as disclosed by Aotani and Brady is highly significant. When applied to footwear, rubber is traditionally used as a friction creating material which "sticks" to a surface upon which it contacts. In contrast, the plastic of the present invention is a relatively hard and durable material adapted for use in cleats such that the plastic digs into either grass, dirt or sand for providing a user with greater stability while performing a sport.

The Examiner attempts to remedy the deficiency of Aotani and Brady in view of the teachings of MacNeill. MacNeill does in fact indicate that the projecting portions of his cleat can be covered in a relatively soft deformable material, such as natural rubber, thermoplastic rubber, soft polyvinyl-chloride, soft poly urethane, or soft plastic. Although this teaching indicates that all of the materials are interchangeable for a covering material for a cleat as disclosed by MacNeill, it by no means suggests that these materials are interchangeable or equivalent for all purposes. For example, a soft plastic ball would not bounce or be equivalent to a traditional rubber ball.

The materials may be interchangeable when used as a cover, but not when used to encase a cleat as disclosed by Brady. Plastics do not stretch and, if they do, they do not return to their original state as does a rubber. Plastics and rubbers are generally considered to be mutually exclusive materials, and serve very different purposes within the manufacturing world. In fact, one test to determine if something is rubber or plastic is to stretch the material and see if it retakes its original shape. In order to mold rubber it must be vulcanized into a single giant molecule and cannot be remolded. This is how tires are made. Whereas plastics are generally formed of many short rigid molecules which become soft and pliable whenever heated and can be remolded many times. This is why plastic can be easily recycled and rubber cannot.

The encasing taught by Brady must stretch in order to function. Therefore, replacing it with a soft plastic as suggested by the Examiner is contrary to the teachings of Brady. Again, in some environments soft plastic and rubber may be interchangeable, but not in the case at hand. To do so as suggested by the Examiner would change the very essence of the structures contemplated by both Aotani and Brady, which both chose to use rubber in an effort to take advantage of its very distinctive properties.

In making the assertion that it would have been obvious to one of ordinary skill to replace the rubber disclosed by Aotani and Brady with soft plastic as disclosed by MacNeill, the Examiner has overlooked a significant aspect of the invention. The aspect of combining plastics together to give the cleat the hardness and flexibility to withstand the pressures exerted underfoot cannot merely be dismissed. Encasing one plastic in another to form a low cost cleat was not an easy and obvious task. It required years of testing various plastic to develop this invention and therefore is not obvious. In fact, the difficulty the inventor overcame in developing the present cleat is likely the

reason the Examiner has failed to find prior art disclosing or suggesting the claimed cleat.

Again, the importance of rubber's specific characteristics is taught very well by Brady. The rubber traction member 32 in Brady is said to "deform and stretch to enable the peg 31 to penetrate the ground". Thus, to change the rubber in Brady, or for that matter the rubber of Aotani, which the Examiner has argued would be obvious to modify based upon the disclosure of Brady, to a soft plastic would be contrary to the teachings of Brady as soft plastics don't stretch.

Ultimately, the latest Office Action, like the numerous previous Office Actions, fails to show or teach any reference wherein one plastic is encased in a second plastic during a molding process. These limitations are set forth in Appellant's claims and have yet to be addressed.

One does not merely substitute rubber for plastic as discussed above. Rubber is a thermoset material, whereas plastics are general thermoplastic material. Rubber, once set, retains its elasticity whereas plastic loses its elasticity. The word plastic comes from the Greek "plastikos," meaning "moldable." Most polymer plastics are formed through the application of heat and pressure. The thermoplastic polymers disclosed in the present specification can be reheated and reshaped whereas thermosetting polymers, such as rubber, retain their shape even at relatively high temperatures and cannot be reformed.

We call plastics *plastic* because they are pliable, that is, they can be shaped and molded easily. Some nuances and details of what makes a plastic a plastic might be useful to go over. For example, why do we call a material a plastic and not a rubber, or elastomer? The answer is in the bouncing. You can stretch an elastomer, and it bounces back. Plastics tend to either deform permanently, or just plain break, when you stretch them too hard. Although plastics don't behave as well as rubber when they're stretched, it takes a lot more energy to stretch them in the first place. In other words

"plastics resist deformation better than elastomers do". This is good when we don't want our material to stretch and the inventor does not want his materials to stretch. It takes more energy to stretch the plastic, making it resistant to deformation. But at the same time, if you pull hard enough, you cannot only stretch a plastic, but it will stay in the shape you stretched it into once you stop stretching it. Elastomers bounce back when you let go.

With regard to hard plastic and soft plastic, soft plastic is not rubber. The plastic keys on your keyboard are hard, while the plastic around the cables of the same computer is soft. This is because all plastics have a certain temperature above which they are soft and pliable, and below which they are hard and brittle. This is called the glass transition temperature, or T_g . The T_g is different for each plastic. At room temperature, some plastics are below their T_g , and so they are hard. Other plastics are above their T_g at room temperature, and these plastics are soft. A soft plastic is pliable, not elastic. Rubber is elastic.

As such, Applicant respectfully requests that the outstanding rejection of claim 1 be reversed. The Examiner has failed to present a rejection which may be sustained as set forth by the relevant case law and the governing interpretation of the U.S. Patent & Trademark Office. Specifically, the Examiner has failed to show a suggestion or motivation to modify the reference or to combine reference teachings; the plastic disclosed by MacNeill offers properties very different from those contemplated by Aotani and/or Brady. One skilled in the art would certainly not look to replace rubber with plastic when rubber has been chosen based upon its deforming and stretching characteristics. The Examiner has also failed to show a reasonable expectation of success in modifying the primary reference based upon the teachings of the prior art; in fact, modification of Aotani and/or Brady as proposed by the Examiner would be contrary to the intent of Aotani

and/or Brady and likely destroy the product intended by Aotani and/or Brady in view of the fact that rubber and plastic would behave very differently in this environment.

As to claims 12 and 15, they include limitations substantially similar to those defined in claim 1 and are believed to overcome the prior art of record for the reasons presented above with regard to independent claim 1. As such, Appellant respectfully requests that the rejection relating to claims 12 and 15 also be reversed.

As to claims 2, 3, 13, 14 and 16-20, they are respectively dependent upon independent claims 1, 12 and 15, and are believed to overcome the prior art of record for the reasons presented above with regard to independent claim 1. As such, Appellant respectfully requests that the rejection relating to these dependent claims also be reversed.

II. CLAIM 4 IS NOT OBVIOUS UNDER 35 U.S.C. § 103(a) BASED UPON THE DISCLOSURE OF AOTANI IN VIEW OF BRADY AND MACNEILL.

Claim 4 is dependent upon claims 1 and 2 and further defines a cleat “wherein the insert includes a raised spike opposite the first end of the stem portion, the raised spike being aligned with the traction member spike to cooperate therewith and function as a visual wear indicator for the cleat”.

The “raised spike” disclosed in Aotani may not function as visual wear indicator as it is not encased within the traction member. The entire idea of the visual wear indicators in accordance with the disclosed invention is that the traction member will wear away revealing an underlying spike of a different color. As the “spikes” of Aotani are not covered by the traction member as required by

the claims, it would be impossible for these members to function as visual wear indicators in accordance with the present claims. Even if encased as taught by Brady the raised spike would still not function as a wear indicator as the rubber is intended to stretch and deform and would mostly be penetrated by the spike and not wear away as would a soft plastic.

Still further, as shown above it would not be obvious to encase the spike with a soft plastic based upon the teachings of MacNeill. In this environment rubber and soft plastic are not interchangeable equivalents.

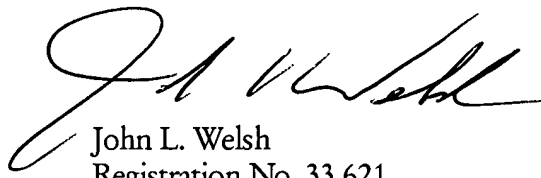
Aotani Brady and MacNeill, therefore, fail to disclose the limitations required in accordance with claim 4. Similarly, nothing in the prior art discloses or suggests the modification of Aotani to include these limitations. For the reasons presented above with regard to the limitations of claim 4, as well as the reasons present above with regard to claim 1, it is Appellant's opinion that claim 4 overcomes the prior art of record and Appellant respectfully requests that the rejection under 35 U.S.C. § 103(a) be reversed.

As to claim 5, it is dependent upon independent claim 4 and Appellant respectfully requests that the rejection thereof be reversed for the reasons presented above with regard to claim 4.

III. CONCLUSION

In conclusion, Appellant has now shown that the references cited in the Office Action neither disclose nor suggest the claimed cleat for footwear. Therefore, it is respectfully requested that all of the outstanding rejections of claims 1-5 and 12-20 be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. L. Welsh', written in a cursive style.

John L. Welsh
Registration No. 33,621
Attorney for Appellants

WELSH & FLAXMAN, LLC
2450 Crystal Drive, Suite 112
Arlington, VA 22202
(703) 920-1122
Docket No. GAR-001

APPENDIX

CLAIMS ON APPEAL

1. A cleat for an article of footwear consisting entirely of plastic, the cleat comprising:
an insert and a plastic traction member, the insert and traction member constituting separate and distinct elements formed at distinct times in the manufacture process;
the insert is from a synthetic plastic material, wherein the insert has a stem portion with engagement means for releasable engagement with a complementary formation defined on an undersole of the article of footwear; and
the plastic traction member is secured to the insert during a molding process, and encases the insert with the exception of the engagement means, thereby holding the traction member captive on the insert; wherein the insert is made entirely from a synthetic plastic material having a greater hardness than the traction member.
2. The cleat according to claim 1, wherein the insert includes:
a stem portion having a first end and a second end;
an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear; and
a securing formation extending from the second end of the stem portion for securing the traction member to the insert.
3. The cleat according to claim 1, wherein the insert is formed of a synthetic plastic material having a hardness between 75 MPa and 85 MPa.

4. The cleat according to claim 2, wherein the insert includes a raised spike opposite the first end of the stem portion, the raised spike being aligned with a traction member spike to cooperate therewith and function as a visual wear indicator for the cleat.

5. The cleat according to claim 4, wherein the insert and traction member are made from different color materials.

12. A cleat for an article of footwear consisting entirely of plastic, the cleat comprising:
an insert and a plastic traction member, the insert and traction member constituting separate and distinct elements formed at distinct times in the manufacture process;

the insert being made from a synthetic plastic material including a stem portion with an engagement means at a first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear and a securing formation in the form of a flange extending orthogonally from the stem portion;

the traction member being secured to the insert and encasing the flange during a molding process; and

wherein the insert is made from a synthetic plastic material having a greater hardness than the traction member.

13. A cleat according to claim 1, wherein the traction member includes a pair of passages arranged immediately adjacent to the insert, for receiving corresponding portions of a tool for fastening the cleat to the article of footwear.

14. A cleat according to claim 12, wherein the traction member includes a pair of passages arranged immediately adjacent to the insert, for receiving corresponding portions of a tool for fastening the cleat to the article of footwear.

15. A cleat for an article of footwear consisting entirely of plastic, the cleat consisting of an insert and a traction member, the insert and traction member constituting separate and distinct elements formed at distinct times in the manufacture process;

the insert consisting of a stem portion having a first end and a second end with an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear; and

the traction member being made from plastic and encasing the second end of the insert therein during a molding process such that only the stem portion protrudes from the traction member; and

wherein the insert is made entirely from a synthetic plastic material having a greater hardness than the traction member.

16. The cleat according to claim 2, wherein the securing formation is a flange extending radially from the stem portion.

17. The cleat according to claim 16, wherein the flange includes a plurality of apertures extending therethrough.

18. The cleat according to claim 12, wherein the insert includes:
- a stem portion having a first end and a second end;
 - an engagement means at the first end of the stem portion for releasable engagement with a complementary engagement formation defined on an undersole of the article of footwear; and
 - a securing formation extending from the second end of the stem portion for securing the traction member to the insert.
19. The cleat according to claim 18, wherein the securing formation is a flange extending radially from the stem portion.
20. The cleat according to claim 19, wherein the flange includes a plurality of apertures extending therethrough.



IFW
AF #
3128

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Garvie

Serial No.: 09/584,375

Group No.: 3728

Filed: 05/31/2000

Examiner: A. Stashick

For: CLEAT FOR FOOTWEAR

Commissioner of Patents & Trademarks
Washington, D.C. 20231

TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION -- 37 CFR 192)

1. Transmittal herewith in triplicate is the APPEAL BRIEF in this application with respect to the Notice of Appeal filed on 03/09/2004.

NOTE: *"The appellant shall, within 2 months from the date of the notice of appeal under § 1.191 in an application, reissue application, or patent under reexamination, or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate." 37 CFR 1.192 [emphasis added].*

2. **STATUS OF APPLICANT**

This application is on behalf of

other than a small entity

X small entity

3. **FEE FOR FILING APPEAL BRIEF**

Pursuant to 37 CFR 1.17(f) the fee for filing the Appeal Brief is:

X small entity \$165.00

other than a small entity \$320.00

Appeal Brief fee due \$ 165.00

4. EXTENSION OF TERM

NOTE: The time periods set forth in 37 CFR 1.192(a) are subject to the provision of § 1.136 for patent applications 37 CFR 1.191(d). Also see Notice of November 5, 1985 (1060 O.G. 27).

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply.

(complete (a) or (b) as applicable)

- (a) _____ Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

<u>Extension</u> <u>(months)</u>	<u>Fee for other than</u> <u>small entity</u>	<u>Fee for</u> <u>small entity</u>
_____ one month	\$ 62.00	\$ 31.00
_____ two months	\$180.00	\$ 90.00
_____ three months	\$430.00	\$215.00
_____ four months	\$680.00	\$340.00

Fee \$ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- _____ An extension for _____ months has already been secured and the fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

or

- (B) X Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$165.00

Extension fee (if any) \$ _____

TOTAL FEE DUE \$ 165.00

6. FEE PAYMENT

 X Fee previously paid April 8, 2003.
 Attached is a check in the sum of \$160.00.
 Charge Account No. 01-2221 the sum of \$ _____.
A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

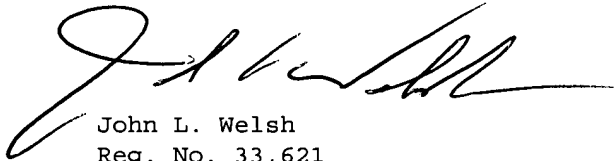
NOTE: *If there is a deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to change the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.*

X If any additional extension and/or fee is required, this is a request therefor and to charge Account No. 01-2221.

AND/OR

X If any additional fee for claims is required, charge Account No. 01-2221.

Respectfully submitted,



John L. Welsh
Reg. No. 33,621

WELSH & FLAXMAN LLC
2450 Crystal Drive, Suite 112
Arlington, VA 22202
(703) 920-1122
Docket No. GAR-001